IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.08.2006

CORAM

THE HONOURABLE MR. JUSTICE R.BALASUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE V.DHANAPALAN

CRL. APPEAL NO. 576 OF 2004
AND
CRL. R.C. NO. 1588 OF 2004

CRL. A. NO.576 OF 2004

1. Mr.Sanjay Dalmia
2. Mr.Vijayakumar Dalmia
3. Mrs.Suman Dalmia .. Appellants

- Vs -

Stare rep. by
Deputy Superintendent of Police
Crime Branch, CID Metro Wing
Chennai - 2. .. Respondent

CRL. R.C. NO.1588 OF 2004

P.C. Goel .. Petitioner

- Vs -

1. Madhuri Dalmia

2. Stare rep. by
Deputy Superintendent of Police
Crime Branch, CID Metro Wing
Chennai - 2. .. Respondents

Criminal Appeal and Criminal Revision filed against the judgment passed by the Mahalir Neethi Mandram, Chennai, in S.C. No.377 of 2001 dated 6.4.2004 as stated therein.

For Appellants : Mr.Sanjay Ramasamy

For Petitioner : Mr. S.Anantha Narayanan
(For Intervenor in CA No.576/04)

For Respondents : Mr. N.R.Elango, APP in CA 576/04
& for R-2 in Crl. R.C. No.1588/04
Mr. Sanjay Ramasamy for R-1 in
Crl. R.C. No.1588/04

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COMMON JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY
R.BALASUBRAMANIAN, J.)

Five persons were tried in S.C. No.377/01 on the file of the Court of Mahalir Neethi Mandram at Chennai under Sections 498-A, 304-B IPC and Sections 4 and 6 (2) of the Dowry Prohibition Act. At the end of the trial, the learned trial Judge found A-1 to A-3 alone guilty of the above referred to offences and, accordingly, sentenced A-1 to undergo imprisonment for life for the offence under Section 304-B IPC and A-2 and A-3 each to undergo rigorous imprisonment for a period of seven years for the same offence. No separate sentence was awarded for the offence under Section 498-A IPC and Sections 4 and 6 (2) of the Dowry Prohibition Act. In addition to the above, A-1 to A-3 were directed to pay a sum of Rs.50,000/= each as compensation to P.W.1 and a sum of Rs.50,000/= each as compensation to the minor child, Piyush Dalmia. The compensation amount, to be paid to the minor, was directed to be invested in a nationalised bank till the minor attains majority. A-1 to A-3 are therefore challenging their conviction before this Court in this appeal. Challenging the acquittal of A-5, P.W.1 in that sessions case is before this Court in the accompanying revision. The State had not challenged the acquittal of A-4 and A-5 in the judgment under challenge. Heard Mr.Sanjay Ramasamy, learned counsel appearing for the appellant and for the contesting respondent in the revision against acquittal; Mr.N.R.Elango, learned Addl. Public Prosecutor appearing for the State in both the cases and Mr.S.Ananthanarayanan, learned counsel appearing for the revision petitioner.

2. The prosecution case is that between 22.1.99 and 30.1.01, the accused subjected Archana, since deceased, to cruelty; made demand for dowry and unable to bear the torture, Archana committed suicide and, therefore, punishable under Sections 498-A and 304-B IPC and Sections 4 and 6 (2) of the Dowry Prohibition Act. To substantiate their case, the prosecution examined P.W.s 1 to 28 besides marking Exs.P-1 to P-62 and M.O.s 1 to 10. The defence examined one witness on their side as D.W.1 and marked Ex.D-1. C.W.1 was examined as a court witness through whom Exs.C-1 to C-3 came to be marked.

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3. A-1, A-4 and A-5 are the sons and daughter of A-2 and A-3 (A-2 and A-3 are the father and mother of A-1). A-1 is the husband of Archana, who is the daughter of P.W.1. Archana is the deceased in this case. P.W.1, as already stated, is the father of the deceased, while P.W.2 is the daughter-in-law of P.W.1 and wife of P.W.3. In other words, P.W.3 is the son of P.W.1 and the brother of the deceased. We will extract hereunder in extenso as to what P.W.1 spoke in court on material aspects:-

> "3.1. I have two sons and one daughter; P.W.3 is the eldest of the three and he is my son; my second son is Rakesh Kumar and Archana is my daughter. all my children are married; Archana was given in marriage to A-1; A-2 is the father of

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A-1, A-4 and A-5; A-3 is the wife of A-2; all the accused were living in West Mambalam as a joint family; I had taken four LIC policies in the name of my daughter to the total value of Rs.5 lakhs; I have purchased Indra Vikas certificate in the name of my daughter, the value of which is Rs.2 lakhs; I am the nominee under all the LIC policies and the maturity value of all the LIC policies is Rs.9 lakhs; the proposal for my daughter's marriage was given on 27.8.98 by P.W.4; it is she, who took the lead for the marriage; during the marriage negotiations, A-2 and A-3 wanted properties to the value of Rs.9 lakhs, besides a cash of Rs.1 lakh as dowry; the properties they demanded include gold jewellery, silver jewellery and silver articles, gold chain, furniture, electronic goods, electrical goods and diamond ring; the jewels would constitute 85 to 90 sovereigns; Rs.75,000/= would be the value of the silver articles; in three instalments, I complied with the demands; during betrothal function, during Tilak function and at the time of marriage I have given what they wanted; in my community there is no such custom of giving dowry; after my daughter's death, I gave a list of the articles given as dowry to the police; as I was looking out for a bridegroom in Chennai for my daughter so that I can see her as often as I like, I gave my daughter in marriage to the bridegroom; the betrothal function was held in Central Sindoori hotel on 26.9. and I do not remember the year; during the betrothal, I gave gold chain, gold ring, gold coin, bracelet, silver coin and cash; but, however, I do not remember how much cash I gave at that time; I have spent about Rs.75,000 to Rs.80,000 on the betrothal function; the Tilak function was held in GRT Grand hotel on 20.1.99; At that time I gave Rs.1 lakh to A-1 as demanded earlier; I also gave bracelet, chain, diamond ring, wrist watch and suit to A-1; I had given a gold jewellery set to A-3 and to A-5 I gave half jewellery set; half jewellery set means without bangles; on the Tilak function day itself I gave 150 silver coins and I spent a sum of Rs.2,25,000/= for that function; only the bridegroom should perform the Tilak function; however, for that function, the expenses were equally shared; the marriage took place in Radha Park hotel on 22.1.99 for which I spent a sum of Rs.3 lakhs; for a few days after marriage my daughter was happy; thereafter, A-1 demanded a sum of Rs.25,000/= from me, which I sent through my daughter.

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3.2. A-3 insisted that the nomination under the four LIC policies should be changed in the name of A-1 and, accordingly, I changed the nomination in

the name of A-1; Exs.P-1 to P-4 are the LIC policies; since my daughter often told me that her husband takes liquor and beats her, I must change the nomination in the LIC policy, I changed it; I advised my daughter to put up with any shortcomings, adjust herself and thus lead a life; I also told her that time will cure all her problems; P.W.7 is a servant in my house and coming to know that my daughter is suffering hardships, I sent P.W.7 to do household works in my daughter's house; he worked there for seven or eight days and then returned; P.W.7 told me that only my daughter is doing all the household works in her in-laws house and she is therefore suffering; A-2, A-3 and A-5 have sent back P.W.7. Even after marriage, all the accused were living as a joint family; A-1 was doing fruit canning business; to expand his business, he wanted a sum of Rs.1 lakh first; then he demanded a sum of Rs.25,000/= and lastly he demanded a sum of Rs.4,75,000/=; A-5's betrothal was held at Delhi; since A-2 and A-3 asked me to look for alliance for their daughter, I arranged an alliance and proposed to them; A-2 came to Delhi along with his family members and he finalised the proposal; the betrothal was in fact held at Faridabad; I did not know how much money was spent for that betrothal function; but, however, that alliance did not go through; the accused wanted me to give them a sum of Rs.1 lakh finding fault that because of me only they spent for that betrothal; through my daughter they made a demand on me to pay Rs.1 lakh to meet the expenses which they have incurred in that betrothal function; however, I did not give the money.

3.3. For the second time there was a betrothal function at Chennai for A-5's marriage for which I was invited; at that time I noticed my daughter totally upset; I also saw my daughter's jewellery were worn by A-5 and my daughter was wearing only imitation jewellery; my daughter was so upset on that also; I gave a chain to A-3 on the seventh month function of my grandson born through my daughter; I gave a chain to A-2 and A-1; as directed by A-2 and A-3, I gave money to the relatives as well; I gave gold coins and silver articles; in January, 2001, I went to Tirupathi; all the accused and my daughter also came and at that time my daughter told me that all the accused are quarrelling with her often and they wanted her to give her jewels to A-5; I told my daughter not to part with the jewels till I tell her; my wife died on 2.9.00; even thereafter, my daughter was alright; but, however, she was very sad over her mother's death; on 23.1.01 A-1 contacted me; After

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A-5's betrothal A-1 telephoned to me and asked me to give a sum of Rs.5 lakhs for his sister's marriage; I expressed my inability; again he said that the marriage is finalised for April and even then I said that I cannot give money; On 30.1.01 my second son (not examined) received a phone call; the caller said "Hello" and then put down the phone; my second son told me that he got the call on 29th and I therefore asked him to contact Dalmias' (A-1, A-2 and A-4 have the surname Dalmia) and enquire as I did not get the telephone line; on 30.1.01 I went for a medical check-up with my eldest son and I returned by about 9.15 a.m. and at that time my second son told me that he spoke to Archana over telephone and Archana cried at that time that she must be taken home immediately; I asked my elder son to speak to Archana over telephone and at the receiving end the phone was attended by A-3 and by calling my daughter by name she gave the phone to my daughter; I heard Archana in tears requesting my elder son to call me and, accordingly, the phone was given to me; it was around 10.00 a.m.; my daughter told me that I must take her immediately and she would tell in person the details; I told her that my second son (not examined) would reach her house by 12.00 noon to pick her up and that she must be ready by that time.

3.4. At 12.00 noon, A-1 telephoned, which call my elder son attended; we were informed that Archana has died and when asked as to what is the cause, the phone was put down; on hearing that, I was totally upset; I, along with my sons and P.W.2 went in a car to see Archana; my elder son made a call on the mobile phone to find out the cause for my daughter's death and the cause was that she committed suicide by pouring kerosene; on reaching the house we found a fire service vehicle opposite to the house; police personnel were also there; we went to the first floor and on the way we found bloodstains in the steps; bloodstains were seen in the screen and the steps; in the first floor, A-1, A-2, A-3 and A-4 were there; A-5 was not there; in the second floor also I noticed bloodstains in the wall; we tried to see Archana's dead body and some persons unknown to me prevented me from proceeding further; I got emotional and I wanted to go up and see, but I could not; I did not have the courage; my two sons told me that they will take care of the situation and advised me to sit by the side; some unknown persons took me and my daughter-in-law to a nearby place where police came and took my signatures in blank papers; I refused to sign; I was taken inside a room where I found A-1, A-2, A-3 and A-4 and one

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C.M.Goel; there was a white paper containing some written material; the aforesaid persons asked me to sign; I signed and Ex.P-5 in the said white paper is my signature; in two papers they have taken my signature, one contained a printed material and the other unwritten material; when I asked them as to why I am asked to sigh, they told me that only then I would be in a position to receive the dead body and in the second paper my signature was taken for the purpose of post-mortem; the Dalmia family members were there and they were keeping quiet; the funeral took place on 1.2.01; I was not keeping good health, I returned home and recovering composure and strength through my second son, I sent a complaint on 7.2.01 giving details of the cruelty meted out to my daughter; that complaint is Ex.P-6, which is given to the Tahsildar; I have written the complaint to the Tahsildar because the police was trying to help the Dalmia family."

4. P.W.20 is the Sub-Inspector of Police in the Ashok Nagar police station. He was on patrolling duty from 7.00 a.m. till 2.00 p.m. on 30.1.01 in the areas lying within the jurisdiction of Ashok Nagar and Kumaran Nagar police station, watching for commission of crimes. At about 11.15 a.m. On that day, when he was patrolling the 4th Avenue in Ashok Nagar, he received a message from the Control Room, Egmore, that he must visit No.1, Baroda 3rd Street, West Mambalam, since there was fire in the terrace. He was asked to give a report after inspection. This made him go to the said place immediately and on reaching the place he found the fire service unit already there. The second floor was an open terrace. P.W.14, the fire service officer, was already there. P.W.20 observed the charred dead body of Archana and the body was lying near the water tank with face upwards. He also observed a burnt white plastic can, which is M.O.1. He recovered it. He recovered M.O.2, a five litre capacity can containing varnish to its 3/4th level. He also found here and there burnt pieces of cloth and they are M.O.s 3 to 5. He also observed a half burnt nylon rope, M.O.6. Then he informed the Asst. Commissioner of Police as well as the Control Room. He found, on the door leading to the open terrace, bloodstains. He also noticed bloodstains in the steps leading from the 2nd floor to the first floor. He also found broken bangle pieces strewn all over the steps. He found bloodstains in the screen of the first floor and the screen is M.O.7. He ensured that nobody tampered with the evidence as per the directions given by the Asst. Commissioner of Police. Then he asked the father-in-law of Archana (A-2) and her husband (A-1) to give a complaint and they directed this witness to enquire Archana's father (P.W.1). When this witness asked P.W.1 to give a complaint, he expressed his inability of not knowing Tamil. A-2 and A-1 were by the side of P.W.1. Goel, present in court, was also there at that time. P.W.20 is not acquainted with Hindi and the constable present with him also do not know Hindi. A-1 and A-3 talked among themselves in Hindi. Then, whatever they stated in Tamil, he reduced the same into writing as a complaint. A-1 and

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A-2 asked these authorities to take the signature of P.W.1 in the complaint. Then A-1 and A-2 took the signature of P.W.1 and gave it to him. Ex.P-26 is the complaint reduced into writing by the constable present with him. Then he came back to the police station and registered it and prepared Ex.P-27, printed first information report. He sent the dead body to the Royapettah Government Hospital covering it with a dead body, M.O.8. The Asst. Commissioner of Police took up investigation in this case and till he arrived he preserved the crime scene.

5. P.W.27 is the Asst. Commissioner of Police during the relevant time in Greater Chennai. He collected the express records, Exs.P-26 and P-27 registered under Section 174 Cr.P.C. from P.W.20. Since it has come to light that Archana died within two years after marriage, he forwarded the express records to the Personal Assistant (General) to the Madras District Collector through the Sub-Inspector of Police. Then he reached the scene of occurrence, where in the presence of P.W.25 and another prepared the observation mahazar, Ex.P-46 and the rough sketch, Ex.P-52. P.W.25 witnessed the above proceedings. Then P.W.27 sent for the photographer to take photographs of the scene of occurrence as well as the dead body. P.W.18 is the photographer, who accordingly photographed the crime scene as well as the dead body. M.O.23 and M.O.24 series are the photographs and negatives. P.W.27 sent the dead body to the hospital for post-mortem. From the crime scene he recovered M.Os. 1 to 9 under Ex.P-47. Then he sent those properties through the Tahsildar for chemical examination. He examined P.W.24 and others by recording their statements. P.W.20 had already sent the express records to the Personal Assistant (General) to the Madras District Collector. P.W.27 also sent a report to the Personal Assistant (General) to the Madras District Collector about the crime. The Tahsildar, Mambalam-Guindy was directed to conduct inquest.

6. P.W.23, during the relevant time, was Tahsildar, Egmore-Nungambakkam circle. He was directed to conduct inquest regarding the death of Archana. Ex.P-34 is the requisition given by P.W.27 to the Collector to conduct inquest. P.W.23, accordingly, went to the Royapettah Government Hospital where the dead body kept in the mortuary was identified to him, which he observed. Then in the presence of panchayatadars, he conducted inquest over the dead body and prepared Ex.P-25, inquest report. He noticed traces of blood on the left hand elbow of the dead body. He sent a requisition for conducting post-mortem by atleast two doctors. P.W.23 examined Rakesh Kumar (brother of the deceased and not examined in this case), A-1 and the panchayatadars by recording their statements. A-1 brought the panchayatadars. Ex.P-36 is the statement of A-1; Ex.P-37 is the statement of Rakesh Kumar (brother of the deceased and not examined in this case) and Ex.P-38 is the statement of A-5. In the crime scene, which is an open terrace in the second floor of the house, he found dots of blood and blood spread in the open terrace floor; parapet wall; the door leading to the open terrace and on the side wall of the stairs leading to the open terrace. Post-mortem was conducted by a team consisting of P.W.22 and others. Rakesh Kumar, the brother of the deceased, asked permission from P.W.23 to videograph the post-

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mortem and he accordingly permitted it. However, the team of doctors, who conducted post-mortem, refused permission to videograph the post-mortem stating that it is not possible and only when the dead body is in police custody it could be videographed. Accordingly, P.W.23 permitted videographing of the dead body before commencement of post-mortem. P.W.26 is the videographer, who on the request of the President of Lions Club, Royapuram, went to his office and with him he went to the crime scene. He photographed the bloodstains found in the staircase of the first floor; the wall on either side of the staircase and the screen just at the beginning of the staircase. He was asked to photograph those persons present there and the police personnel. He also noticed broken bangles on the sides of the stair case and plastic pipes. Then he was taken to the open terrace where he was shown the smoked area and he was asked to photograph it. With the permission of the police he photographed it. By 6.30 p.m. on the day, he completed the work and took sixteen photographs. Ex.P-48 series are the videoed photographs (16 Nos.) and the negatives are Ex.P-49 series. The Lions Club President asked him to go to Royapettah Government Hospital to photograph the dead body. Accordingly, he reached the mortuary in the Royapettah Government Hospital on 1.2.01 and he videographed as directed by the doctor. Ex.P-50 is the video cassette. The police personnel there asked him to take photographs also as his video camera had a provision to take photographs. Accordingly, he took photographs also and Ex.P-51 series are the photographs. P.W.23 continued his action further. He examined A-5, who is shown to have suffered burn injuries in the crime scene in SRM Hospital (A-5 was already admitted there on 1.2.01) and examined her by recording her statement. As there were bloodstains in the crime scene, he sent a requisition to the forensic laboratory to depute a scientific expert to examine the scene and, accordingly, the crime scene was examined by scientific experts. Ex.P-39 is the report of such examination. On 7.2.01 P.W.1 gave a complaint and on the same day Rakesh Kumar, brother of the deceased (not examined) sent to him sixteen photographs taken from the scene of occurrence along with a letter. P.W.23 sent those photographs to the Assistant Director of Forensic Laboratory. Ex.P-40 is the letter given to him by Rakesh Kumar. Ex.P-6 was given to him personally by P.W.1. The Asst. Commissioner of Police, Saidapet, sent twenty-one objects recovered by him in connection with this case to him on 7.2.01 and those properties were also sent by this witness to the forensic laboratory as an enclosure to his letter, Ex.P-41. Ex.P-39 (already marked) is the report of the Assistant Director of the forensic laboratory, which he received on 12.2.01. On 19.2.01 P.W.1 sent another letter (Ex.P-42). The inquest conducted by this witness revealed that it may be a case of dowry death and, therefore, he sent his report to the District Collector for investigation by the police. Ex.P-43 is his report. Ex.P-44 is the requisition given by him to the hospital authorities to conduct post-mortem. He received a report only in respect of three objects out of twenty-one from the scientific laboratory, which report he sent to the Asst. Commissioner of Police as an enclosure to his letter, Ex.P-45.

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7. P.W.27 continued his examination further by examining witnesses and recording their statements. As the occurrence place comes within the jurisdiction of Tahsildar, Egmore-Nungambakkam, a request given by him to the Madras District Collector for conducting an enquiry was forwarded to the said Tahsildar (examined in this case as P.W.23). P.W.24 is the scientific officer. As per the directions of his higher officers, he reached the crime scene at about 7.00 p.m. on 2.2.01. As it was dark at that time disabling him from collecting any incriminating objects from the scene, he decided to postpone his inspection to the next day and, accordingly, he inspected the place at 8.00 a.m. on 3.2.01. He collected several incriminating objects from the crime scene, namely, M.O.5, a broken glass bangle; a paper cover, M.O.4; a partly burnt paper piece; a fully burnt matchstick and a cover, M.O.9. From the paper cover; from the parapet wall in the open terrace; from the place east of the parapet well and from the place where Archana would have died, he removed bloodstains with cotton swabs. Then by using cotton swab procedure, he recovered bloodstains noted by him on the plywood door leading to the open terrace; from the open terrace floor and from the plastic ropes (yellow and green colour); blood sample from A-5, who is stated to have helped the victim and then handed over the same to the Asst. Commissioner of Police for their onward journey to the laboratory. P.W.27 continued his investigation. On 2.2.01 P.W.22 (the doctor, who did post-mortem) inspected the crime scene and then examined A-5, who was admitted as in-patient in SRM Hospital. P.W.27 would state that he sent for the services of P.W.24 to assist him in his investigation and we have already referred to the oral evidence of P.W.24. The incrimination objects recovered by P.W.24 from the crime scene and handed over to P.W.27 were sent by him to the forensic laboratory through the inquest Tahsildar. Ex.P-53 is the said requisition. P.W.27 caused blood samples to be taken from A-5 through P.W.24. Further witnesses were examined by P.W.27 by recording their statements. He sent all the case properties recovered in this case to the laboratory for chemical examination. By examining the employees of Airtel (mobile service provider) he verified the duration of certain outgoing calls stated to have been made by A-5 to her fiancee (would-be husband). He collected the post-mortem report from P.W.23 and as the post-mortem report disclosed internal injuries on the head of Archana, and since drops of blood were noticed in several places in the crime scene and witnesses have stated that Archana, before her death, was subjected to cruelty, he altered the section of offence from one under Section 174 Cr.P.C. into one under Sections 302 and 498-A IPC. Ex.P-54 is the altered express first information report. The alteration is also on the basis of the statement made by the doctor, who did post-mortem. At 2.00 p.m. on 19.2.01 he arrested A-1 and then sent him for judicial remand. On 22.2.01 he sent the post-mortem report to the court. He examined further witnesses by recording their statements. On 27.2.01 he arrested A-2 to A-5 from their residence at West Mambalam and then sent them for judicial remand. Pursuant to the orders obtained by P.W.1 and another in the High Court by filing O.P. Nos. 2656/01 and 3279/01 and as per the directions of the Director General of Police, the investigation was transferred to the Crime Branch CID, Greater Chennai and, accordingly, he handed over the entire case diary to

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the Deputy Superintendent of Police, Crime Branch CID, Chennai. Exs.P-55 to P-59 are the reports received from the forensic laboratory on 15.2.01, 23.2.01, 1.3.01 and 12.3.01. M.O.9 was recovered under Ex.P-47.

8. P.W.28, during the relevant time, was the Deputy Superintendent of Police, CB-CID, Metro. He took up further investigation in the case as per the orders of the High Court and as per the directions of the Director General of Police. Ex.P-61 is the High Court's order. He perused the general diary of the investigating police station given to him by P.W.27. He observed the crime scene on 26.3.01 and it was under the control of C.M.Goel, brother of A-3. He collected the incriminating objects from P.W.27. Then he summoned P.W.s 1, 2, 3 and others to his office and examined them. P.W.s 1 and 2 did not know Tamil and, therefore, P.W.3 translated their disclosure in English, which he recorded. P.W.s 1 and 2 gave a statement in Hindi. At that time, P.W.3 gave a list, Ex.P-7 to him giving details of the jewels and ornaments given to the deceased at the time of her marriage with A-1. P.W.28 informed the remand court that Crime Branch CID is doing further investigation in this case. He examined several witnesses by recording their statements. He enquired the employees of Airtel (mobile service provider), previously known as Skycell, to get details of A-1's mobile phone having No.99400-77159. Then from P.W.23 he recovered Exs.P-56 to P-59.

9. P.W.2 is the daughter-in-law of P.W.1 and wife of P.W.3 and the sister-in-law of Archana, since deceased. Apart from giving details of the family, we find that her evidence about the circumstances leading to the marriage of Archana with A-1 and the incidents that followed thereafter till her death is more or less on the same lines as spoken to by P.W.1. However, we state even at this stage that if there is any variation between her evidence and P.W.1 on any material aspect, we will highlight it in the discussion portion. P.W.3 is the son of P.W.1 and husband of P.W.2 and elder brother of Archana, since deceased. His evidence also is more or less on the same lines as P.W.s 1 and 2, and as noted for the evidence of P.W.2, we will highlight any variation in his evidence, if any, when compared to the evidence of P.W.s 1 and 2 during discussion time. Since we have already extracted in extenso the oral evidence of P.W.1, we will highlight what exactly P.W.s 2 and 3 spoke regarding the occurrence proper while we discuss the merits and demerits of the prosecution and defence cases.

10. P.W.4 is a resident of Delhi. But, however, she has been living in Chennai for the last thirteen years (she was examined on 13.5.02) after her marriage. She states that she knows the accused as well as C.M.Goel, who is the elder brother of A-3. She noted the presence of Goel in court. She had come to know C.M.Goel four or five years prior to she giving evidence in court on her visit to Gita Ramayana Sabha and at that time he suggested to her that she must find out an alliance for her sister's son (A-3 is his sister). She identified A-1 present in court as the son of A-3. She took the lead from the words of C.M.Goel and then negotiated with P.W.1 for giving his daughter, Archana, in

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marriage to A-1. The talk regarding the proposed marriage and finalisation was in the house of C.M.Goel. Dalmias' family (the accused are Dalmias') wanted to know whether the marriage would be performed as per their desire and C.M.Goel told that A-1 is a nice boy, which P.W.4 believed. It was talked at that time that during marriage gold and silver ornaments, besides a cash of Rs.1 lakh should be given. Giving electronic articles also was in the talk. It was indicated that a total sum of Rs.10 lakhs would be needed for the marriage. That sum would take care of the marriage and betrothal expenses. She would state that the marriage took place at Radha Park hotel between Archana and A-1 on 22.1.99. After marriage, Archana and A-1 were living at West Mambalam as members of a joint family and initially they were happy. Over telephone Archana used to tell her that A-5's conduct is not conducive and in addition to that, her in-laws, namely, A-2 and A-3 are also pestering her often for money and giving troubles to her in that regard and, therefore, requested P.W.4 to come over and see her. Archana told her that A-1, A-4 and A-5 are irritating her and on occasions A-1 under intoxication of liquor used to assault her. P.W.4 advised Archana that these are all common features in a joint family and as days goes on everything would become alright. P.W.1 had taken four LIC policies in the name of Archana besides one Indra Vikas Certificate and all that was prior to marriage. After marriage, A-5 insisted that the nomination in the policies and Indra Vikas Certificate should be changed in the name of A-1 and finding no way out, P.W.1 changed the nomination from his name to that of A-1's name in the LIC policies. Archana gave birth to a boy and the naming ceremony of that child was held in Geetha Bhavan; Archana's wedding anniversary was held at Hotel Sindoori and on the same day in the same hotel, A-5's betrothal also took place. P.W.4 participated in the function along with her family members. At that time she noticed Archana very sad and when she asked her as to why she is so sad, Archana told her that A-3 and A-5 had taken all her jewels and this witness saw A-3 and A-5 wearing those jewels. Archana also told this witness that she must give all the jewels to A-5 for her marriage. Archana was found to be heart-broken and sad and this witness noticed Archana wearing imitation jewellery. P.W.4 knows that A-1's business is not doing well and, therefore, through his wife he used to demand money from P.W.1. Pursuant to demands made after marriage for money, P.W.1 had given in all a sum of Rs.6 lakhs to the accused. For the marriage of A-5, A-1 demanded a sum of Rs.5 lakhs from P.W.1 through Archana, since deceased and P.W.1 replied that he would think about it. She came to know on 30.1.01 that Archana died and she immediately went to her house along with her husband. But, however, she did not see the dead body as by that time it had been taken to the hospital. She noticed, in the walls of the first floor, dots of blood and in the steps of the staircase leading from first floor to second floor also dots of blood were also noticed by her. She also saw broken bangles and they were on the floor near the grill gate in the first floor and the screen. Before the marriage of Archana, a demand for 101 sovereigns of jewels was made, which accordingly was given by Archana's family, but, however, she did not know the value.

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11. P.W.5 in her evidence would state that she knows the accused and the deceased and that she attended the marriage between A-1 and the deceased. She would state that prior to marriage, Archana was happy, but she was not to be after marriage and she was found to be lazy. But, however, she did not know the reason for such change. She came to know that Archana died on 30.1.01. P.W.6 is the sister-in-law of A-3. She was examined to prove the finalisation of A-5's marriage proposal and the possible sum that may be required for performing such marriage, but she turned hostile. But, however, before she came to be treated as hostile, she would state that A-5 is yet to be married; her marriage proposal was negotiated at Delhi, but, however, she does not know who arranged for that marriage proposal discussion in Delhi. P.W.7 is stated to be the household servant in the house of P.W.1. He would state that as Archana was in the family way, P.W.1 deputed him to Archana's house to attend to the household work where he noticed that Archana alone was found doing all the household works to the exclusion of others. He would then state that A-5 told him that there are enough people to attend to the household work and he can go and A-5 had only Archana in her mind when she stated so. This witness left the house of Archana within four days after he reported for duty there. He would also state that prior to that he worked in the house of the accused on the death of the grandfather of A-1. P.W.8 is stated to be the cashier in a transport business run by P.W.1. He would state that his nature of work includes going to bank for remitting money; depositing cheques for encashment; getting money from the bank and giving salary to the employees. He would also state that he is personally looking after the personal accounts of P.W.1 and he knows the accused. According to him, when Archana told P.W.1 that her father-in-law, mother-in-law and her husband are asking for money, P.W.1 gave a sum of Rs.6 lakhs, which was not paid in one instalment, but paid in several instalments.

12. P.W.9 is the Asst. Administrative Officer in the LIC Branch at Anna Nagar during the relevant time. P.W.1 took policies in the name of Archana (deceased) and the duration of the policies is 25 years. On 5.7.99 the name of the policy holder in the policy stands changed from Archana Goel to Archana Dalmia based on the request, Ex.P-8 dated 14.6.99. He had filed copies of all the four policies (the policies are already marked as Exs.P-1 to P-4). Out of the four policies, two policies have been surrendered and honoured. The surrender was on 31.3.00 and the payment was made as evidenced by the letter, Ex.P-9. P.W.10 during the relevant time was working as Senior Manager of Indian Bank at T.Nagar. During investigation he gave the details of the accounts in the name of the deceased, A-1 and A-3. Ex.P-10 is the account opening form of Archana, since deceased and Ex.P-11 is the statement of account. Exs.P-12 and P-13 are the account opening application forms and the statement of accounts of A-1, while Exs.P-14 and P-15 are the respective documents for A-3. On 15.4.00 a sum of Rs.28,574/= was credited into the account of Archana by clearing a cheque and on 19.4.00 a sum of Rs.28,500/= was withdrawn. P.W.11 is a laundry man and he is employed in the shop belonging to his brother in Baroda Street where the crime scene is situate. His duty is to go to every house for collecting

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clothes for ironing and then delivering the ironed clothes. During the course of such work, he had gone to the house of the accused also several times who reside opposite to the shop where he is working. Besides A-1, A-2, A-4 and A-5, Archana was also living there. Their residential accommodation consists of a ground floor, first floor and an open terrace and he had gone to their house several times to collect clothes for ironing. On some occasions, he had noticed Archana in a happy mood and on some occasions in a dejected mood. Archana told him that in the absence of the household servant main, she used to wash clothes and whenever ironing charges are asked, she used to reply that she will not ask for money from the others and P.W.11 can directly ask others. On occasions when he used to go to the house of the accused to collect clothes, he had seen A-5 and Archana quarrelling and immediately they will cool down and then go back to their routine moods. P.W.12 is the Manager of Bank of Baroda. In his Bank, Dalmia Private Ltd., had an account and Ex.P-16 is the application given to open an account and Ex.P-17 is the statement of accounts of that account holder for the period from 3.4.99 to 29.1.01. P.W.13 is the Chief Manager of State Bank of India at T.Nagar and he speaks about the account of A-2 in that Bank. Ex.P-18 is the account opening application form and Ex.P-19 is the statement of accounts for the period from 2.2.99 to 31.1.01.

13. P.W.14 is the Station Officer of the fire service station at Ashok Nagar. Over wireless, at 10.55 a.m. on 30.1.01, he received information about the fire and, accordingly, reached the crime scene. In the first floor of the said building the incident is shown to have taken place. But, however, there is no trace of fire in the first floor. When he asked A-1, he directed him to go to the upper floor, where he found a 25 year old female lying fully charred covered by a bed spread. One of her hands alone was visible. When he lifted the bed spread, he found nothing on the human body. Police arrived by that time. P.W.15 is an employee of Airtel during the relevant time. He was enquired by the police to give details of the calls to and from mobile phone having No.98400-17159 and he accordingly provided the details. From that mobile phone there was a call on 30.1.01 to another telephone bearing No.6256198 and the duration of the call was 41 seconds. From the same phone there was another outgoing call at 9.55 a.m. on the same day to another phone having No.4800219 and the duration of that call was 37 seconds. At 10.48 a.m. on the same day from the same mobile phone there was an outgoing call to telephone bearing No.4839371 and the duration of the call is 2 mins. 41 seconds. Ex.P-20 is the billing chart. P.W.16 is a resident of Shenoy Nagar, Chennai and she has done her course in Business Management. She knows the accused and the deceased and her father and P.W.1 are close friends. She would state that she had attended the betrothal and the marriage of Archana, since deceased and she would state that after marriage, Archana was living as a member of joint family in West Mambalam. She would then state that she had not seen Archana often thereafter, but during functions she used to meet her. But, however, she used to tale to her over phone often. She would then depose that her brother's marriage was attended to by Archana and at that time

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Archana cried to her by stating that her in-laws are torturing her and A-1 was demanding money. According to her, Archana also stated that besides the above, A-5 was also torturing her and that A-1 used to beat her by compelling her to get money from her parents. P.W.17 is the Manager of a hire purchase company, who speaks about financing a sum of Rs.1.20 lakhs on 26.12.00 to A-2 to purchase a vehicle and Ex.P-21 is the document evidencing the same. On that financial assistance, A-2 purchased a vehicle bearing No. TN-07-H-7533 and the payment schedule is fixed at Rs.8,300/= per month for the first seventeen months and Rs.7,100/= for the eighteenth month. Upto 28.4.01 four instalments have been paid and Ex.P-22 is the statement of accounts. P.W.19 is a retired doctor from Tamil Nadu Medical Service and he was a consultant at SRM Hospital. On 30.1.01 when he was on duty, A-5 was brought before him for burn injuries and he issued Ex.P-25, the wound certificate. The injuries are simple in nature. A-5 had suffered a abrasion on her right hand. He did not notice any fresh bleeding in injury No.7 and he also did not notice any bleeding at all in the other burn injuries. P.W.21 is another doctor working in SRM Hospital, who had examined A-5 brought before him by A-4 on 30.1.01. Ex.P-28 is the intimation sent by him to the police and Ex.P-29 is the wound certificate given by him for A-5. He noticed a partly healed abrasion on A-5's right hand wrist. On 7.2.01 a eleven months old child named Piyush Dalmia was brought before him at 7.30 a.m. and he found only superficial burn injuries and the burn injuries is to the extent of 1%. Ex.P-30 is the certificate given by him for the child.

14. P.W.22 is the Assistant Professor of Forensic Medicine at Royapettah Government Hospital. On receipt of Ex.P-31 given by P.W.23, he conducted post-mortem on the dead body of Archana. The post-mortem was commenced by him at 11.05 a.m. on 1.2.01. During post0mortem he found various symptoms as noted by him in Ex.P-32, the post-mortem report. The symptoms noted are as hereunder :-

> "External Injuries :-
>
> 1) Extensive mixed burns seen all over the body from head to feet both in the front and back. The charred skin has peeled off in most of the area including the palms and feet exposing the underlying inflamed and hyperaemic subcutaneous tissue. The burnt skin along with the nails were not found in the left thumb and index finger and the underlying hyperaemic subcutaneous tissue was seen. Heat lacerations seen over the right cubital fossa and front and inner aspect of right arm . Hair all over the body is singed. Scalp hair is almost completely singed except few strands of intact hair in the occipital region.
>
> 2) Dried up streaks of blood stains seen over the outer aspect of left forearm and left palm. Small lacerations seen on the lateral aspect of left thenar eminence 1 x 0.2 cms x fascia deep. Small punctuate lacerations seen on the medial border of left palm.

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3) Superficial split laceration seen on the dorsum of left hand in the 2nd metacarpal region (index finger) 4.5 x 1 cms x fascia deep.

Internal Injuries :-

Bruising of the scalp seen over the vault of the skull and also on the left temporal region. Subscalpular extra cranial haematoma seen over the vault of the skull 8 x 7 x 0.2 cms.

On dissection of Head : Thin film of subdural haemorrhage seen all over the brain.

Heart : Chambers contained clotted blood.

Lungs : Oedematous c/s congested exudes copious frothy fluid.

Larynx and Trachea : Contained frothy fluid. Soot particles.

Hyoid Bone : Intact.

Stomach : Empty. No specific smell perceived. Mucosa - NAD.

Liver, Spleen and Kidneys : C/S congested.

Bladder : Empty. Uterus : Empty. Copper 'T' found inside.

Brain : Thin film of subdural haemorrhage seen. Hyperaemic surface vessels full. C/S shows numerous petichiae."

The doctor opined that death is as a result of shock due to burns. He had also stated that the injuries found on the head of Archana are not sufficient to cause death. But, however, as a result of those injuries, the victim could have become unconscious. But he cannot say the duration of such unconsciousness. He then deposed that the 4th injury found on the head of the dead body could have been caused by the blunt side of a weapon and such injury is not possible if the head comes in contact on its own with another object. All the injuries are ante-mortem in nature. He then stated that immediately after post-mortem he visited the crime scene.

15. P.W.28 was continuing his investigation by examining witnesses and recording their statements. On 16.4.01 P.W.3 had moved the Principal City Civil Judge, Chennai, to cancel the bail granted to the accused. On 27.4.01 bail granted to the accused was cancelled with a direction to the accused to surrender themselves in prison. As A-1 and A-2 did not surrender, P.W.28 filed an application on 30.4.01 before the 17th Metropolitan Magistrate to cancel their bail bond. On 3.5.01, A-1 to A-4 surrendered before the 17th Metropolitan Magistrate. P.W.28 examined A-5 on 9.5.01 and to fix her blood group, he took her to Royapettah Government Hospital and blood grouping test was done there and her blood was found to be of 'O' negative group. On 22.5.01 P.W.28 examined A-3 in the Women's Sub Jail at Saidapet and she refused to disclose anything about the crime. When she was questioned with reference to the jewelleries provided to the deceased at the time of marriage, she refused to answer. On 10.7.01, after completing all the legal formalities, P.W.28 filed the final report against the accused in court under Sections 498-A and 304-B IPC and Sections 4 and 6 (2) of the Dowry Prohibition Act, 1961.

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16. When the accused were questioned under Section 313 Cr.P.C. on the incriminating materials made available against each one of them, they denied each and every circumstance put up against them as false and contrary to facts. As noted earlier, a witness was examined on their side as D.W.1 and Ex.D-1 had come to be marked. D.W.1 in her evidence would state that she knows the Dalmia family (accused family) for over twenty-five years and she used to participate in all the functions held in the house of the accused and she knows A-1, A-4 and A-5 from their age of ten onwards. She would then depose that she attended the marriage of Archana with A-1 and, thereafter, she had been visiting the house often. She would also state that she had talked to Archana Dalmia over telephone often. According to her, from her personal visits to the house of Dalmias' and her personal talk over telephone with Archana, she would say that Archana was living happily and she was living with them as a joint family member. Prior to Archana's death, her mother died and, thereafter, she found Archana in a depressed mood whenever she had gone to her house. She had also noticed Archana weeping and she had consulted her. According to her, Archana used to call A-3 as her mother. D.W.1 had consoled Archana that though her mother had died, yet she has another mother in her in-laws house and, therefore, if she goes on weeping, then there would be nobody to look after her child. Ex.D-1 is the case history submitted by P.W.23, the inquest Tahsildar. It records that on the occurrence day at 10.30 a.m. in the crime scene, Archana self-immolated her in her house by pouring kerosene. The dead body has been sent to the Royapettah Government Hospital for post-mortem; Archana left behind a eleven months old male child; Archana appears to have died within two years after marriage; the investigating officer had filed a report and the post-mortem is going on.

17. C.W.1 is the Assistant Director (Retd.), Forensic Sciences Laboratory. As already stated, he had been examined at the instance of the court. His evidence shows that on 5.2.01 he inspected the crime scene on the request given by P.W.23 and at the time of his inspection P.W.s 23, 24 and police officers were present. Ex.P-39 is his report. Since in his report he has reiterated the contents of his report, Ex.P-39, and since Ex.P-39 forms part of the records, we are not stating here in detail his evidence. Suffice to say that his report shows that Archana, before she came to die, was moving from one place to another in the open terrace. His oral evidence and the report also shows the areas where he saw dots of blood and carbon particle impressions in various portions in the house. Exs.C-1 to C-3 came to be marked through him. Ex.C-1 is black and white photographs (34 in number); Ex.C-2 the negatives of the same and Ex.C-3 is the requisition given by P.W.23. In Ex.C-3 P.W.23 had addressed the Director of Forensic Sciences Department to depute a senior forensic scientist to inspect the crime scene and give his report.

18. Mr.Sanjay Ramasamy, learned counsel appearing for the appellants would contend that the earliest version in this case is Ex.P-26, the complaint itself, whose author is P.W.1. The said complaint do not show any incriminating materials at all against

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any of the accused. The next document that had come on record is Ex.P-37, the statement of Rakesh Kumar Goel, recorded by P.W.23, the Tahsildar, who conducted inquest. This statement was on 31.1.01 itself, namely, one day after the occurrence. Even in that statement, neither the offence under the provisions of the Dowry Prohibition Act and as a consequence thereof, the ingredients of the offence under Sections 304-B and 498-A IPC are disclosed. Therefore, reading Exs.P-26 and P-37 together and noting the failure on the part of the investigating officer to examine Rakesh Kumar in court as a witness, this Court could easily ignore the oral evidence of P.W.s 1 to 4 in court, which alone, if at all it is held so, throw light against the accused on the offence referred to earlier. Assuming this Court could brush aside the contents of Exs.P-26 and P-37 for the present, yet the evidence of P.W.s 1 to 4 also do not show any disclosures, which are incriminating in nature against the accused. According to him, the evidence of P.W.s 1 to 4 is far from convincing and far from the truth when tested with the contents of Exs.P-26 and P-37. Even assuming for a minute, without conceding, that the entire prosecution case stands established without there being any rebuttal, yet it only shows that subsequent to the marriage of Archana with A-1, to expand the business of A-1 and to meet the marriage expenses of A-5 and also to get reimbursement of the expenses incurred by the Dalmia family in having the betrothal function at Faridabad, Delhi, which fell through, demand for money was made. The expression "dowry" is defined under Section 2 of the Dowry Prohibition Act. The Section broadly shows, that any property or security given or agreed to be given must have connection with the marriage of the parties, namely, A-1's marriage with Archana. Since admittedly there is no evidence to show that such demands, as referred to above, was made in connection with the marriage of A-1 and Archana, this Court has to necessarily hold that the ingredients of the offence under the Dowry Prohibition Act is not made out at all. Once the offence under the Dowry Prohibition Act fails, then the offence under Section 304-B IPC also would have no legs to stand, since the ingredients of the offence of "dowry" as defined under Section 2 of the Dowry Prohibition Act stands telescoped into the ingredients of Section 304-B IPC. By taking us through the Explanation to Section 304-B IPC, learned counsel would contend that the expression "dowry" used in Section 304-B Part-I IPC would have the same meaning as given under Section 2 of the Dowry Prohibition Act, 1961. Consequently, learned counsel would contend that unless the ingredients of Section 304-B IPC are established, then there is no scope for drawing the statutory presumption under Section 113-B of the Indian Evidence Act. It is then submitted by the learned counsel that the ingredients of Section 498-A IPC, which are, admittedly, totally different from the ingredients of the other offence referred to earlier are also not established and, therefore, the conviction of the appellants for the offence referred to earlier is without any legal evidence. To bring the act of the accused within the provisions of the Dowry Prohibition Act, especially having the definition given to the word "dowry" in the said Act, learned counsel wound contend that there should be explicit materials on record to show that the demand for dowry is vociferous; put in action in a telling manner

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by telling Archana in clear terms that unless she complies with the demands made by them, neither she could enter the house nor she could continue in the house any longer. All these materials are totally absent in this case. But on the other hand, Archana was living as a free bird in the house of her in-laws. Therefore, the cumulative effect of the absence of telling circumstances exposing Archana to cruelty and torture in the context of the demand for dowry and her continuing to live in the house without any restriction shows that the prosecution is not speaking the truth. It is also contended by the learned counsel for the appellants that from the evidence of C.W.1 and the contents of Ex.P-39, the prosecution case that Archana was assaulted, lost her life and then she was put in flames cannot be sustained. There is nothing to show, in this case, that Archana was subjected to torture in the context of dowry demand soon before her death and that the demands shown to have been made after her marriage, have no connection with the marriage of A-1 and Archana and, therefore, it must be held that the demands stated to have been made prior to the marriage, assuming they are true, have become stale and the link between that demand and the death is not alive. Ex.P-5, the inquest report of the Tahsildar (P.W.23) is relied upon to contend that the present prosecution case is an afterthought. Unless such a live link between the demand/exposure to torture and death is shown, Section 304-B would not get attracted. Mr.Sanjay Ramasamy, learned counsel for the appellants, in support of his arguments, namely, what materials would constitute the ingredients of the offence under Sections 304-B and 498-A IPC and the Dowry Prohibition Act and what proof the court would expect from the investigating agency in such cases, brought to our notice a number of judgments, and those judgments are :-

"1) 2003 Crl. L.J. 69 (SC) ;
2) 1995 Crl. L.J. 2472 (Orissa High Court) ;
3) 1993 Crl. L.J. 2766 (Himachal Pradesh High Court) ;
4) 1995 Crl. L.J. 2944 (Punjab & Haryana High Court) ;
5) 2005 Crl. L.J. 625 (Uttranchal High Court) ;
6) 2004 Crl. L.J. 5005 (SC) ;
7) 2004 Crl. L.J. NOC 244 (Andhra Pradesh High Court) ; and
8) AIR 2005 SC 4429"

19. Mr. N.R.Elango, learned Addl. Public Prosecutor, appearing for the State would submit that any act on the part of either party to the marriage or their relatives either before or during or after marriage, if such act satisfies the definition of dowry under Section 2 of the Dowry Prohibition Act, is made punishable under that Act, namely, the Dowry Prohibition Act. If in a given case within a period of seven years, a party to a marriage dies under the circumstances stated in Section 304-B IPC and in the face of the statutory presumption available under Section 113-B of the Indian Evidence Act, then this Court cannot give a restricted meaning to the expression used in Section 2 of the Dowry Prohibition Act - the expression being "in connection with the marriage". Therefore, according to him, the demand for dowry may be made before marriage or even during marriage to be

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complied with before marriage or during marriage or after marriage. According to him, and such a demand could be made even after performance of the marriage. Therefore, the expression "in connection with the marriage" takes within its fold all the three stages as referred to above. According to him, the expression "in connection with the marriage" as it stands in the Statute book today is in substitution for the earlier expression "in consideration of the marriage". The legislative intent in substituting the expression as referred to above must be taken note of and in interpreting a provision in a Statute the objectives of the Act, which was sought to be achieved, must be had in mind and the mischief sought to be suppressed shall be allowed to revive. Learned Addl. Public Prosecutor also submitted that from the established circumstances if an inference could be legally drawn that there is a demand for dowry, then there is no harm at all for the court in drawing such inference without insisting for direct evidence for the crime. For the above mentioned purpose, learned Addl. Public Prosecutor relies upon the judgment of the Supreme Court in Pawan Kumar & Another - Vs - State of Haryana reported in 1998 SCC (Crl.) 740. The phrase, "in connection with the marriage" would take in its fold continuation of the marriage bond till it reaches its logical and natural end or gets snapped by an order of court. He elaborated his submission by stating that if such is not the meaning to be given to the expression "in connection with the marriage", then the very object of the Act to prevent menace to the society would never be achieved. He also added that if such an interpretation is not to be given to the provisions of the Dowry Prohibition Act, then every greedy and avaracious person would avoid making express and explicit demands for dowry "in connection with the marriage" before the marriage itself and cleverly would camouflage his demand in a totally different form after the marriage though in reality such demands has the connection with the marriage. In continuation of the above submission, learned Addl. Public Prosecutor argued by taking us through the entire evidence on record that at all stages, namely, at the negotiation stage for the marriage of A-1 with Archana; then Tilak function stage; at the marriage time; on the trip to Tirupathi in January, 2000; naming ceremony of the child of Archana; for the alleged business expansion of A-1; when the first betrothal function of A-5 held at Faridabad, Delhi failed; during the time when the second betrothal function of A-5 was held at Chennai and subsequently when the marriage date was fixed, there has been constant and persistent demands for money by the accused from P.W.1's family. In contending that those demands are in connection with the marriage of A-1 with Archana, learned Addl. Public Prosecutor would contend, even otherwise from the established circumstances this Court could legally infer that those demands would definitely have a telling impact on the continuance of the marriage of A-1 with Archana. In other words, if a fear was put in the mind of Archana that her marriage with A-1 would break, then the demands shown to have been made by the accused at one stage or the other must be definitely inferred as a demand "in connection with the marriage" of A-1 with Archana. As far as Ex.P-39 is concerned, learned Addl. Public Prosecutor would contend that by the time C.W.1 entered the crime scene and examined, there are possibilities for

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the entire evidence being tampered with in favour of the accused, since, admittedly, from 2.2.01 till 5.2.01, the day on which C.W.1 inspected the crime scene, the crime scene was in the exclusive control of C.M.Goel, who is none else than the brother of A-3. The findings noted by C.W.1 in Ex.P-39 were not noted at all by P.W.24, the scientific officer (a Government employee) when he visited the crime scene on 2.2.01. According to him, assuming the worst against the State based on C.W.1's evidence and Ex.P-39, this Court could only hold that Archana was mobile during the course of the occurrence. But nonetheless, according to the learned Addl. Public Prosecutor, the post-mortem report and the evidence of P.W.22, the doctor, who did post-mortem, show that the injuries found on the head of Archana were ante-mortem in nature and his evidence also shows that injury No.4 found on the head of Archana is definitely due to use of extraneous force and not Archana on her own coming into contact with any other object. In this case there are continuous acts spoken to by the witnesses against the accused of making demands, which are definitely in the nature of demand for dowry. Courts have held that the expression "soon after death" is an elastic term and it can never be said that the said expression conveys only one meaning, namely, just before death. According to the learned Addl. Public Prosecutor, such exposure to cruelty or torture may be over a period of time and what would be the proper period which could be taken into account by a court would depend upon the facts available in each case. Lastly by inviting our attention to Section 8-A of the Dowry Prohibition Act, learned Addl. Public Prosecutor would submit that the burden is on the defence to prove that he had not committed the offence under the Sections mentioned therein. Learned counsel then elaborated this point by stating that from the materials placed by the prosecution on record, this Court can easily infer that the demands shown to have been made by the accused subsequent to the marriage, though appear to be in a different context, yet it is really a demand for dowry in connection with the marriage of A-1 with the deceased. If this is accepted, then a duty is cast upon the accused to show that they have not made any such demands, which they have failed to do in this case. Learned Addl. Public Prosecutor argues that the defence had not chosen to place any material – either oral or documentary, to discharge this burden, which is initially cast upon them. As far as Ex.P-35 is concerned, it is pointed out that the panchayatadars are shown to have been brought by A-1 and judging by their status it can be easily seen that they are obliging people to the accused. In any event they being not family members of the accused or their neighbours, could have had no chance at all to know the difficulties of the deceased.

20. In arguing the revision against acquittal, Mr.Ananthanarayanan, learned counsel for the petitioner would state that the learned Sessions Judge committed an error not only in law, but also on facts in misreading the evidence resulting in the acquittal of A-5. According to him, there are overwhelming materials against A-5 not only for her presence at all times in the house where the Archana was living, but also at the time when the occurrence had taken place. There is also evidence to show that A-5 also participated in the cruelty/torture in making dowry

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demands along with the other accused. Therefore, the acquittal of A-5 is definitely against the legal evidence available on record.

21. In answering this, Mr.Sanjay Ramasamy, learned counsel for the contesting acquitted A-5 would submit that even in an appeal against acquittal if the court finds that two views are possible from the same set of evidence, then for the mere taking of a different view, the appellate court should not interfere with the judgment of acquittal. While that is the restriction on the part of the appellate court, this Court's power in hearing a revision against acquittal is much narrower. According to him, law is well settled that only when relevant evidence had been ignored or inadmissible evidence is allowed to come on record; relevant evidence is shut down from coming on record; if extraneous material is taken into account in decision arriving process and if the finding of acquittal is perverse, namely, not on legally acceptable evidence on record, this Court could interfere.

22. Having regard to the submissions made by the learned counsel all round, we examined very carefully the materials on record. There cannot be any dispute that Archana died due to the effect of burns. There is medical evidence to support the same. We have already referred to in the earlier portion of this judgment what those medical evidences are. There is also no dispute that Archana died before the expiry of seven years from the date of marriage, to be precise around two years after the marriage. Death of Archana is shown to be not due to any natural cause but due to burn injuries. The prosecution of the accused is for offence under Sections 498-A, 304-B IPC and Sections 4 and 6 (2) of the Dowry Prohibition Act. P.W.1 is the father of the deceased and father-in-law of A-1. A-2 is the father and A-3 is the mother, while A-4 and A-5 are brother and sister of A-1. P.W.4 is the lady, who is known to the family of the accused. Her evidence shows that on account of her close acquaintanceship with the family of the accused, she was asked to look out for a good alliance for A-1 and such a move was mooted by C.M.Goel, who is none other than the brother of A-3. P.W.1 had also admitted that it is only P.W.4, who initiated the move for the marriage of A-1 with his daughter Archana and ultimately it was finalised due to her efforts only. Since the prosecution case is that there was a demand for dowry, we hold that the evidence of P.W.4 may play a leading role in deciding the prosecution case.

23. As far as the demand for dowry and subjecting Archana to cruelty in the context of dowry demand is concerned, the prosecution relies upon the evidence of P.Ws. 1 to 4. We have already noted that P.W.1 is the father of Archana while P.Ws. 2 and 3 are her sister-in-law and brother. Before going into the evidence of P.W.1, we will apply our mind to the evidence of P.W.4, who had taken the steps in arranging the marriage of Sanjay Dalmia (A-1) with Archana. It may be true that this witness had admitted that P.W.1 is his maternal uncle. But nonetheless we have no doubt at all that her evidence cannot be rejected on that sole ground, if it is otherwise found to be reliable and trustworthy. That is the law laid down by various Courts in India.

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Let us go into her evidence. Her evidence shows that she knows C.M.Goel (who is not examined in this case) and he is A-3's brother. She deposed that though she belongs to Delhi, she had settled down at Chennai after her marriage and when she attended one of the religious courses at Geetha Ramayana Sabha, she came to be introduced to C.M.Goel. According to her, sometime thereafter, C.M.Goel requested her to look for an alliance for his nephew, namely, A-3's son. She would then state that she only negotiated with P.W.1 for getting his daughter married to A-1. As far as the crux of the prosecution case is concerned, she had very clearly stated that during the negotiation stage, a demand for dowry in the form of gold jewellery; silver articles; a cash of Rupees One lakh and electronic articles were demanded. She would then state that Archana informed her over telephone that her sister-in-law's conduct (the sister-in-law is A-5) is not conducive. When Archana saw her personally, she told her that her father-in-law (A-2) and mother-in-law (A-3) are often pestering her for money and in that context A-1, A-4 and A-5 are also irritating her considerably. She had further told at that time that A-1, under intoxication of liquor, used to assault her. As is expected of a married woman and as a person, who had finalised the marriage proposal, P.W.4 appears to have advised Archana that in joint family living, such problems may be there and as time progresses, everything will be alright. P.W.4 would then state that P.W.1 had taken four L.I.C. policies in the name of Archana, besides one Indra Vikas Patra and all that have been taken prior to Archana's marriage and Archana told this witness that A-5 was pestering that all those policies should be transferred in the name of A1 and finding no way out, P.W.1 took steps to change the nomination in favour of A-1. Her evidence further shows that she attended the naming ceremony of Archana's child held in Geetha Bhavan and she also attended the wedding anniversary of Archana at Hotel Sindhoori. On that day itself the betrothal function of A-5 took place. This witness is shown to have participated in that function along with her family members. She would then state that at that time, she noticed Archana looking sad and when asked, Archana told her that A-3 and A-5 had taken all her jewels and that they were wearing her jewels at that time. Archana also told her that the accused wanted Archana to give all her jewels to A-5 for her marriage and P.W.4 noticed Archana at that time to be very sad. She also noticed Archana wearing only imitation jewellery at that time. This witness had been subjected to a lengthy cross examination. She had affirmed in her evidence in cross that she had participated in the negotiation prior to the marriage between Archana and A-1, which took place in the house of C.M.Goel. On going through her evidence in cross, we do not find that she had not caved in at all in favour of the accused. On going through the entire evidence of P.W.4, we find that it is natural and convincing and the defence has not made out any case at all while cross examining her to disbelieve her evidence. Therefore, without any hesitation we conclude that the evidence of P.W.4 establishes beyond doubt the following aspects, namely, prior to marriage a demand for dowry was made by the accused which was complied with; after marriage Archana told her about the cruelty to which she was subjected to in the context of demand for money; Archana losing her confidence in the house and feeling depressed on account of the behaviour of

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A-5 and the accused taking her jewels and wearing it by themselves on the wedding anniversary of Archana on which date A-5's betrothal also took place and Archana was found to be not happy at all.

24. It is not as though the prosecution has the evidence of P.W.4 alone to speak about the demand for dowry made before marriage; the demands made thereafter and the mental torture to which Archana was pushed to. As we have already stated, we have the evidence of P.Ws.1, 2 and 3. We have already referred elaborately, in the earlier portion of the judgment, as to what P.W.s 1 to 3 spoke in court. P.W.1 had been subjected to a very lengthy cross-examination. He had been cross-examined with particular reference to the demands spoken to by him in his evidence in chief. In addition to the above, he was also cross-examined on his competency to meet any such demands. Therefore, it is our primary duty to find out whether this witness, namely, P.W.1 had given any answers in favour of the accused, when cross-examined, which would in effect destroy his evidence in chief. Ofcourse, he had admitted that prior to moving to his new house in Anna Nagar, he was living only in a rented house and from the business, which he carries on (he states that he is doing business in transports having seven lorries, meaning thereby he is a fleet operator), he would be earning a sum of Rs.2 lakhs as profit per year. He had also admitted that he had not shown the expenses incurred by him in celebrating his daughter's marriage and meeting other expenses in his income-tax return and that he has the income tax return details in his office. We have to only state that there appears to be a very light-hearted cross-examination of this witness as far as his solvency to meet the claims of the accused. Nonetheless, from the evidence we find that being a fleet operator - possessing seven lorries, and his evidence that his gross profit per year would be Rs.2 lakhs, it is not possible to hold that it would have been impossible for P.W.1 to comply with the demands made by the accused. Normally, a parent prepares himself to meet the possible expenses of his daughter's marriage, why even for his son's marriage, long prior to the expected function. No family normally buys jewellery and other ornaments just before the marriage day and, therefore, it is definitely a long process during which the family of a bride builds up its assets to meet the exigencies of the marriage at a future date. Under these circumstances, as already noted, we are not in a position to doubt the capacity of P.W.1 to meet the demands shown to have been made by the accused.

25. As far as the demand for dowry is concerned and subjecting his daughter to cruelty in the context of the unlawful demands, we find that P.W.1 stood very firm while he was cross-examined on these aspects and he did not give any slip at all in favour of the accused. No doubt he had admitted that though it is not the custom in his community that during marriage wrist watch, clothes and ring would be given to the bridegroom, it does not necessarily mean that the demand stands falsified on that evidence alone. Simply because he did not seek the intervention of elders during the period when the demands are stated to have been made after his daughter's marriage till her death, once again, in our

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considered opinion, would not in any way show that his evidence has to be disbelieved. It all depends upon the individual's concern as to what should be done and how he should respond when his dear daughter, who had been given in marriage in high hopes in a new family, is shown to be suffering untold miseries after the marriage. One may get agitated immediately and try to expose the people making the demand and the other one may succumb to the pressure with a view to see that his daughter's marriage life is not disturbed in any manner. Therefore, it all varies from person to person and the background to which the family belongs. Simply because P.W.1 had not given any complaint to the police at any point earlier to the date on which his daughter died, in our considered opinion, is of no significance at all, since P.W.1 may have been hoping that everything would turn around in his daughter's favour and that she would start living sooner or later happily and in peace. Any hasty action, we cannot lose sight of, if taken by P.W.1 in going to the police, may result in irreparable injury to his daughter. Therefore, without any hesitation we conclude that the evidence of P.W.1, as to the demands made by the accused, as spoken to by him in his evidence in chief stands intact, though he had been subjected to a lengthy cross examination. Like P.W.1, P.W.s 2 and 3 had also been cross-examined by the defence. We must notice here that the nature of the offence being one demanding dowry, the court can definitely see that the evidence for such demands would be only from the family members of the bride, namely, Archana in this case. Therefore, we cannot find fault with the prosecution for not examining anybody other than P.W.s 1 to 3, namely, any neighbour to speak about the dowry demand made by the accused and the ill-treatment to which Archana was exposed to by her husband's family. It must be noticed here that P.W.4 is not only related to the prosecution side, but had firmly stated that she knew C.M.Goel, who is none else than the brother of A-3 quiet well and it is only at their instance she mooted the marriage proposal of Archana with A-1 in this case.

26. As already stated, P.W.s 2 and 3 are the daughter-in-law and son of P.W.1. Let us now find out from their evidence in cross-examination as to whether they have supported the prosecution case or not. P.W.2 had affirmed in her evidence in cross that Archana, since deceased, was very keen that the problem, which she was facing, should not be brought to the notice of the panchayatadars (mediators) for their intervention, as if such a thing should happen it will spoil the family's prestige and respect. Therefore, we get an answer from the evidence of P.W.2 as to why P.W.1 had not chosen to even give a complaint to the police on any day earlier to the fateful day on which Archana died. P.W.2 had also stated in her evidence in cross that Archana was very confident that after the marriage of A-5, all her problems would vanish. P.W.2 very firmly stated in her evidence in cross that after the betrothal function and prior to the marriage of Archana, there were several demands from the family of the accused. P.W.3 also did not give up the prosecution case in any manner when he was cross-examined. We have gone through each and every piece of answer that came from the mouth of P.W.s 2 and 3 when they were cross-examined by the defence and we find,

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without any doubt in our mind, that both the witnesses strongly supported the evidence of P.W.1 about the demands made by the family of the accused. In other words, the evidence of P.W.s 2 and 3 is in total corroboration to the oral evidence of P.W.1 already referred to. P.W.6 turning hostile is no surprise, since she is the sister-in-law of A-3. Nonetheless, we find that there is nothing in her evidence, which would in any way demolish the prosecution case. P.W.7 is the household servant of P.W.1. P.W.1 would state that when his daughter was in the family way, to be of assistance to her, he asked P.W.7 to go and work in Archana's matrimonial house. Ofcourse, P.W.7 did not in his evidence speak about any ill-treatment to which Archana was subjected to in the context of any unlawful demands. His stay in Archana's house was hardly for a period of four days. He would state that A-5 asked him to leave the house stating that there are enough household servants in their house to undertake all the work. This witness had stated that during his tenure in the matrimonial abode of Archana, he noticed that Archana alone was doing all the household works and none, other than Archana in the house, will attend to any of those works. To substantiate the point that P.W.1 complied with the cash demands made by the accused, the prosecution had examined P.W.8, the cashier of P.W.1. Ofcourse, as rightly contended by the learned counsel for the defence, no account books whatsoever has been produced either by P.W.1 or by P.W.8 to show that payments so made have been entered in their books of accounts. P.W.8 would admit in his evidence, regarding the payment made on various dates, that he speaks only from his memory and not from the account books. But, nonetheless, we hold that simply because P.W.8 is not in a position to speak regarding the payments made by referring to the account books and in the context of the evidence of P.W.1 that such payments have not been entered by him in his regular books of account, we are not inclined to brush aside the evidence of P.W.s 1 to 3 regarding the compliance of the demands of the accused by P.W.1. The fact remains established that prior to the marriage of Archana, P.W.1 had taken four LIC policies in her name, besides an Indra Vikas Patra and initially the nominee under those LIC policies was only P.W.1. It has also come out in evidence that after the marriage of Archana to A-1, nomination in all the policies has been changed by bringing in the name of A-1 as the nominee. There is evidence to show that there was a demand from the accused side to change the nomination in the policies in favour of A-1 and, hence, such a move was made. P.W.9 is the officer from LIC, who speaks about the change of nomination in favour of A-1. Ofcourse, his evidence shows that it was on a request given by the policy holder, namely, Archana. But we can still see the reasons behind such change in nomination, which had come to occur within a short span after the marriage, namely, within six months. P.W.9 also deposed that after the change in the nominee's name was made, two out of the four L.I.C. policies were surrendered before maturity for encashment and, accordingly, surrender was accepted and payments made. Therefore, the urgency in which two policies were surrendered for payments speaks volumes about the need for money in the family of the accused. The accused are in a position to explain the circumstances under which the policies were surrendered. But they have not explained. Assuming there is no

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clear cut documentary evidence showing the payment for the policies; credit entry and withdrawal entry, we have no reason to disbelieve P.W.9, who is an independent witness from L.I.C. of India. However, P.W.9 had proved Ex.P.9. A reading of Ex.P.9 shows that it is addressed to the deceased (Archana) and as an enclosure to that letter, a cheque – the details of which is given there, in respect of the surrender value of the policy mentioned therein, had been enclosed. The policy number mentioned therein is one of the policies taken by P.W.1 in favour of his daughter. Therefore, going by the overall evidence available in this case, namely, the evidence of P.W.s 1 to 4, we have no hesitation at all to conclude that the prosecution had definitely established their case that the accused had made demands for dowry and Archana was subjected to ill-treatment in the context of their unlawful demands. D.W.1, examined to prove that Archana was living happily with her husband, would state that after Archana's marriage, her mother died and when she visited Archana after her mother's demise, she found her to be depressed. She consoled her when she was weeping. She claims that she knows the family of the accused for quite a long time. She admits that her husband and the accused belong to the same community. She had categorically admitted that she did not attend Archana's marriage. She had not given any reasons for not attending. This belies her evidence that she is closely acquainted with A1, A4 and A5 from their age of 10 and therefore she knows the their inside story. Her failure to attend Archana's wedding raises a serious doubt in our mind as to whether we should believe her evidence at all. Her evidence shows that Archana was found depressed and she was weeping (though this witness would state that it is as a result of her mother's demise). Going by her overall evidence, we are of the view that her evidence is very very unnatural and probably pressed into service only to defeat the prosecution case. Therefore we are not inclined to accept the evidence of D.W.1 in preference to the oral evidence of P.Ws.1 to 4.

27. We will now take up the question as to how far the contents of Exs.P-26 and P-37 would affect the prosecution case, namely, whether those contents, if accepted, would demolish the evidence of P.W.s 1 to 4. We must note that Mr.Sanjay Ramasamy, learned counsel appearing for the appellants, heavily relied upon the contents of the above referred to two exhibits to contend that the evidence of P.W.s 1 to 4 in all is diametrically opposed to those contents; those two documents are the earliest documents to come into existence and, therefore, they must be given their due weight and if the contents of Exs.P-26 and P-37 are accepted, then this Court must disbelieve the prosecution case. P.W.20 is the Sub-Inspector of Police. His evidence is that when he was on routine patrolling duty in the vicinity of the crime scene, he received information from the control room and then he proceeded to the crime scene. He has also stated that he asked A-1 and A-2, who were present at the crime scene, to give the complaint for which they told P.W.20 that he could enquire P.W.1. It is not the case of the defence that at all stages P.W.1 was also living in their house itself along with them. P.W.1's evidence is that, around 12.00 noon on the occurrence day, a telephone call came from A-1, which was attended to by P.W.1's eldest son and at that

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time information was passed on that Archana died. His evidence further shows that he then proceeded to the crime scene. P.W.2 also would state that she, along with her father-in-law (P.W.1) and her husband (P.W.3), reached the crime scene at 12.00 noon. P.W.3's evidence is also to the same effect. By the time they reached the house, Archana was already dead. In fact, she was charred to death. Why we are highlighting the above aspects is for the following reasons. When A-1 and A-2 were bodily and physically present in their house, where the occurrence had taken place, then it is normally expected from them that they must alone disclose to the police as to what happened. From the evidence of P.W.20 referred to earlier, it is clear to our mind that A-1 and A-2 were trying to keep themselves away from the limelight and that is the reason probably they asked P.W.20 to enquire P.W.1, who, as we have already noted, had reached the crime scene only after the occurrence was over. In other words, we find absolutely no justification for A-1 and A-2 to tell P.W.20 to ask P.W.1 for the details. P.W.2 in her evidence had stated that on reaching the crime scene, she along with her husband (P.W.3) and her brother-in-law, Rakesh Kumar Goel, went to the second floor and she found, at that time, the body of Archana totally charred and she also noticed blood stains in the second floor as well as in the steps leading to the second floor. P.W.1 had stated that when he wanted to go up and see the dead body of his daughter, some unknown persons prevented him from going up and he became emotional at the crime scene and though he wanted to go up and see, yet he could not go because he could not muster the courage; conviction and strength to go up and see. P.W.3 had also stated that he, along with his younger brother and P.W.2 went to the open terrace where he found the charred dead body of his sister. Having regard to the evidence of P.W.s 1 to 3 as to how they have conducted themselves after entering the crime scene, we find it extremely difficult to digest the suggestion made by A-1 and A-2 to P.W.20 that he must enquire P.W.1 and get the details. P.W.20 would then state that when he asked P.W.1 to give a complaint, he said that he did not know Tamil. P.W.20 also admitted that he also did not know Hindi as also the constables, who were by his side at that time. His evidence shows that A-1 and A-2, along with Goel – who is the uncle of A-1, were there. Then he would depose that A-1 and A-3 conversed in Hindi and then as they narrated in Tamil, he reduced the same into writing. His evidence further shows that A-1 and A-2 got the signature of P.W.1 in that complaint and gave it to him, which is marked as Ex.P-26.

28. We perused Ex.P-26. It must be noticed that Ex.P-26 by itself is not substantive evidence. Ofcourse, P.W.1 had been cross-examined by questioning him that having disclosed in Ex.P-26 that he had no suspicion in the death of his daughter, he is now giving a different version in court due to inducement and he had denied it. We would like to remind ourselves, even at this stage, that the evidence of P.W.20 shows that P.W.1 is not the author of the contents of Ex.P-26 and Ex.P-26 had been reduced into writing only to the narration of A-1 and A-3. Though P.W.20 had been cross-examined to show that P.W.1 alone had given the complaint personally, he denied the said suggestion. It must be noticed that either at that stage of recording the complaint or even at a

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later stage when P.W.20 gave evidence in court, he had no axe to grind against the accused or any added interest in favour of P.W.1 or any special interest to protect him. He is a neutral witness and we see no reason at all as to why he must depose in court that P.W.1 is not the author of the contents of Ex.P-26, but it is only to the narration of A-1 and A-3 he reduced the same into a complaint. Therefore, we accept the evidence of P.W.20 that the contents of Ex.P-26 were subscribed only by A-1 and A-3. Ofcourse, the contents of Ex.P-26 discloses that Archana, in a depressed mood, had self-immolated her and died. Ex.P-26 contains information as hereunder :-

> "At about 9.00 a.m. on 30.1.01 (the occurrence day), A-2, A-1 and A-4 have left their house to their company situated at No.1, Janakiram Street, West Mambalam; at 10.15 a.m., A-2 came back to his house and taking his wife, A-3, went to a clinic called Ramana Clinic at West Mambalam to visit one of their relatives."

It is not the case of the defence that P.W.1 knew before hand, namely, before entering the crime scene or even after entering the crime scene, that A-1, A-2 and A-4 moved out of the house and A-2 coming back again went out in the company of A-3, which are all part of the contents of Ex.P-26. If we test the disclosures found in Ex.P-26 as extracted above, and in the light of the other materials, which we have noted earlier, we have no doubt at all that even by the time P.W.20 had arrived at the crime scene, the accused have started scheming among themselves as to how to wriggle out of the tight corner in which they are placed. When P.W.1 is not shown to be knowing the movements of the accused as referred to above from the house, we fail to understand as to how he could have given those details to P.W.20 as found reflected in Ex.P-26. Again we find in Ex.P-26 a disclosure, namely, A-5 on hearing her sister-in-law's distress call, ran upstairs and when she attempted to put out the flames, she suffered injuries on both her hands and, therefore, she was taken to SRM Hospital at West Mambalam. Once again we find that it is not the case of the defence that P.W.1 had this information also by the time he went to the house of the accused or even by the time the police arrived at the scene. In these circumstances, we have to state that from the contents of Ex.P-26 and having the evidence of P.W.20 in our mind, we have no doubt at all that Ex.P-26 is the brain child of A-1 and A-3, if not A-2, and they have very cleverly managed to put these materials in the complaint and get the signature of P.W.1 as its subscriber. The extent of shock to which P.W.1 would have been subjected to in coming to know that his dear daughter is charred to death cannot be evaluated at all, and in fact the evidence of P.W.1 is that, though he wanted to go up and see his daughter lying dead, yet he cannot gather the courage and strength to go up. In these circumstances, we have the least hesitation to reject the submission of Mr.Sanjay Ramasamy, learned counsel appearing for the appellant that the contents of Ex.P-26 must be taken as a true disclosure made by P.W.1.

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29. Next we have Ex.P-37. This statement is that of Rakesh Kumar Goel, who is the other son of P.W.1. This statement was recorded by P.W.23, the Tahsildar, who conducted inquest on

31.1.01. Ofcourse, in this statement given by Rakesh Kumar, he did not give any specific details of any demand for dowry or the ill-treatment to which his sister, Archana, was subjected to. However, in this statement, he had disclosed that in all cash, jewels, furniture and utensils worth about Rs.10 lakhs had been given at the time of marriage. P.W.s 1 to 4 have spoken about this demand. Ofcourse, in this statement the expression used by the author of the said document is "the bride's party offered". The above expression has been heavily relied upon by the learned counsel for the appellants to contend that when the bride's party themselves are shown to have offered at the time of marriage as indicated earlier, then the oral evidence before the court, namely, that of P.W.s 1 to 4 that there was a demand for dowry and the same was complied with has to be necessarily doubted. From the mere fact that in Ex.P-37 it is mentioned that the bride's party only offered, it is not possible to conclude that there was no demand at all. As contended by the learned counsel for the appellants and as already noted by us, in Ex.P-37, specific details of the demands; nature of demands and as to how they came to be complied with are not mentioned. But that failure on the part of Rakesh Kumar in not mentioning the details spoken to by P.W.s 1 to 4 in court, in our considered opinion, cannot make any inroads into the evidence of P.W.s 1 to 4 before the court. We do find in Ex.P-37 a disclosure to the extent, namely, whenever Archana goes to her parental house she used to make complaints about A-5. From this it is argued by the defence that there is no adverse comment against A-1 to A-4 and, therefore, going by the contents of Ex.P-37, the involvement of A-1 to A-4 should be totally disbelieved. We are afraid that we cannot agree with the submission so made. P.W.23 conducted inquest on the occurrence day itself and as Rakesh Kumar came to be examined by him during inquest, we cannot lose sight of the fact the shock, which Rakesh Kumar would have suffered on seeing his sister's charred dead body. It is not as though Rakesh Kumar, in his statement marked as Ex.P-37, had positively eliminated the involvement of A-1 to A-4 in the commission of the crime or in making the demands for dowry as spoken to by P.W.s 1 to 4. In Ex.P-37, Rakesh Kumar had disclosed that after marriage his sister is facing several problems. The several problems are spoken to by P.W.s 1 to 4. In Ex.P-37 it is also stated that Archana was beaten by her husband on 30.1.01 and his sister would have been murdered by the accused and he had given reasons for his conclusions. At the risk of repetition, we state that from the contents of Ex.P-37 it is not possible to conclude that the prosecution case now projected before the court is an utter falsehood. On the other hand, we do find materials in Ex.P-37, which go to show that everything was not well for Archana in her married life. In these circumstances, we have no hesitation at all in rejecting the submission made by the learned counsel for the appellants that based on the contents of Exs.P-26 and P-37, the evidence putforth by the prosecution must be rejected.

30. Ofcourse, as contended by Mr.Sanjay Ramasamy, learned counsel appearing for the appellants, the demands stated to have been made by the accused after the marriage are only under the following heads :-

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"1) Demand for Rs.25,000/= by A-1 ;
"2) Change of nominee's name in the LIC policies ;
3) A-1 demanded a sum of Rs.1 lakh to expand his business; second time he wanted Rs.25,000/= and the third time he wanted a sum of Rs.4.75 lakhs ;
4) The accused demanded re-imbursement of Rs.1,00,000/= spent by them on A-5's betrothal at Faridabad ; and
5) A-1 demanded a sum of Rs.5 lakhs for the marriage of his sister (A-5)."

The argument of the learned counsel for the appellants is that, these demands, assuming they stand proved, would part-take the character of "dowry demand". According to the learned counsel for the appellants, the demand for dowry must be in connection with the marriage of the parties, namely, A-1 and Archana. The marriage had already taken place prior to the above referred to demands. There is nothing to indicate from these demands that they were made in connection with the marriage. If that is so, the charges are misconceived and, therefore, the conviction of the accused for the offence under the Dowry Prohibition Act and, consequently, the conviction of the accused under Sections 304-B and 498-A IPC cannot be legally sustained. Though this argument, ex-facie, appears to be impressive, yet on a deeper consideration of the entire materials on record and having the avowed object of the Dowry Prohibition Act in mind, if we consider the argument from that angle, then we have no hesitation at all to say that this argument has to fall to the ground. The prosecution case is that the deceased had complained to her father, P.W.1, that her husband consumes liquor and often assaults her and, therefore, P.W.1 must change the nomination under the policies. We have already noted that P.W.1 had stood the test of cross-examination on all aspects of the prosecution case. Therefore, from the above evidence, it is clear that the change of nomination in the insurance policies is not a voluntary and unilateral act on the part of P.W.1, but it was brought about only by the act of A-1 as brought to the notice of P.W.1 by Archana. P.W.1 had stated in his evidence that because of Archana's request, as stated earlier, to change the nominee's name, he took steps to change the nomination in the policies and he also gave his piece of mind to her to adjust herself in the new environment. P.W.1 had also stated that since the marriage had taken place only recently, lapse of time would bring peace to her. P.W.1's evidence shows that in the betrothal function of A-5 held at Chennai, he found his daughter totally unhappy and he also saw that all the jewels provided by him to his daughter were worn by A-5 at that time and his daughter was wearing only imitation jewellery. He proceeds to state that his daughter was upset about all that. P.W.2 had also stated that she participated in the second wedding anniversary of her sister-in-law held at Hotel Sindhoori and she also saw her sister-in-law at that time unhappy and while her sister-in-law was wearing imitation jewellery, her gold jewelleries were worn by A-3 and A-5. Her evidence also shows that earlier in the month of January 2001, during Pongal, when they went to Tirupathi along with the family of the accused, Archana told her that A-1 and A-3 are compelling her to give her jewels to A-5 for her marriage. P.W.3 would state that as his father refused to reimburse the

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expenses incurred by the accused for the betrothal of A-5 held at Faridabad, which did not end in the marriage, Archana was subjected to increased torture. P.W.3 would further state that on the morning of the occurrence day (the earlier night his brother attended to a call around midnight from A-1) when he called Archana, A-3 picked up the phone and, thereafter, gave the phone to Archana and the moment she picked up the phone, Archana started weeping. P.W.3 would then state that he immediately gave the phone to his father, P.W.1, who after talking with his daughter had told P.W.3 that as Archana is weeping, P.W.3 must immediately go and bring her home. P.W.3 would then state that his father told him that he would send Rakesh Kumar - the other son, by 12.00 noon to the house of the accused to bring home Archana. Therefore, it is clear to our mind that Archana was subjected to ill-treatment in one form or the other right from the day of marriage even till the last minute, namely, on the morning of the occurrence day when she was contacted over phone initially by P.W.3 and then P.W.1 also conversing with her on the telephone, as a continuous process. If we have these aspects of the prosecution case in mind, then we have no doubt at all that the demands shown to have been made by the accused after Archana's marriage, though do not directly have the colour of a dowry demand, yet, it definitely assumes the colour of a dowry demand. We reflect our mind hereunder that the demands are made in a camouflaged manner so as to get away from any possible implication in a criminal prosecution, if ultimately it comes to. We find that there is no need or responsibility for the bride's family to meet the expenses of the marriage of the sister of the bridegroom. When such a demand is made and in the context of the continued sufferings to Archana, it must be held that her marriage with A-1 was at stake all the time. In other words, Archana must have been made to understand that if the various demands referred to were not met by the prosecution party, then there is a grave risk of Archana losing her matrimonial tie with her husband. We find that Archana was found to be continuously sad and depressed on all occasions whenever her kith and kin had chance to see and observe her. If so, we must find out the reasons therefor. If the demands proved to have been made after marriage are only innocuous demands with no adverse impact on Archana, then we see no reason at all for her unhappiness. From the fact that she was found to be unhappy, we do not find it difficult to see that she would have been subjected to a mounting pressure to see the demands are met as otherwise she would go out of the house.

31. The term "Dowry" is defined under Section 2 of the Dowry Prohibition Act. According to the definition, if any property or valuable security given or agreed to be given either at the marriage or before the marriage or any time after the marriage, it constitutes "Dowry". But one thing must be certain, (i.e.) the demand for dowry should be in connection with the marriage of the said parties. "Dowry" is defined under section 2 of the Dowry Prohibition Act as "any property or valuable security given or agreed to be given etc.,..... at or before or any time after the marriage. Therefore, there are three stages at which the element of dowry comes into play namely, at the time of marriage or before the marriage or any time after the marriage.

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The opening words of section 2 contains the expressions "given" or "agreed to be given". Both the expressions could fit into at any three stages mentioned in the section itself and extracted above namely, "at" or "before" or "at any time after the marriage". The section also takes into it's fold a demand for dowry made at any time after the marriage and given or agreed to be given at that stage. There is nothing in Section 2 of the Dowry Prohibition Act to conclude that a demand made subsequent to the marriage cannot part-take the character of dowry. As already stated, the demand must be in connection with the marriage of the parties to the marriage. Would a reading of Section 2 of the Dowry Prohibition Act mean that if a demand is made after the conclusion of the marriage, it cannot be said that the demand is not in connection with the marriage. To answer this, the Court must have the object and purpose of the Dowry Prohibition Act in mind. The purpose and object of the Dowry Prohibition Act, when it was brought in as a Statute, was to suppress the menace of dowry, which was prevailing in all sections of society. It was treated as a great menace to the society's well being. Therefore, we have no doubt at all that in interpreting either the Act or a particular Section, the Court must see that the object which the enactment wanted to achieve should be protected and the "mischief", which it wanted to suppress must not to be allowed to be perpetuated. Therefore, if we hold that the expression used in Section 2 of the Dowry Prohibition Act, namely, "in connection with the marriage of the said parties" would only take in its fold the demands for dowry made either prior to the marriage or at the time of the marriage and not the demands made after the completion of the marriage, it would be disastrous and it would be demolishing and destroying the very object, which the Act sought to achieve. The expression "in connection with the marriage" of the said parties, was substituted for the expression "as consideration for the marriage" of the said parties, by amending Act 63/84. Therefore the Legislative intent appears to be that the Act should have a wide coverage to cover all acts of dowry demand. The expression "in connection with the marriage" would definitely have a wider meaning than the expression "in consideration for the marriage". Under these circumstances, we have no doubt at all that the expression "in connection with the marriage" shall not be given a narrow meaning but it should be given the widest meaning possible, having regard to the Legislative intent, object and purpose which the Act wanted to achieve.

32. Demand for dowry is an evil to the society. It is a menace. It is spreading like a cancerous growth. The Dowry Prohibition Act has been brought out only to curb this menace. If the argument of the learned counsel for the appellant that since the demands, assuming they are shown to have been made, is not shown to be in connection with the marriage of the parties, namely, A-1 and the deceased, as the marriage had already taken place, the prosecution case must fail is accepted, then it would lead to disastrous results. In our considered opinion, accepting such an argument would defeat the very object and purpose of the Act itself. In other words, if such an argument is accepted, then demands in many forms - not directly touching upon the

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marriage between the parties would be made, though behind the screen, the marriage alone is at stakes. Therefore, the Court has a duty to test every case from the established circumstances available and then come to a conclusion whether it is really a demand for dowry in connection with the marriage of the parties or not. If the circumstances in a given case are telling that those demands, though not directly in the colour of a dowry demand, would still have an impact on the continuance of the marriage bond between the parties, then the Court would not commit any mistake at all in concluding that such demands are in fact demands in the nature of dowry in connection with the marriage. It is not possible to accept that demands made after marriage cannot be in connection with the marriage. Before performing the marriage, such demands would definitely have a connection with the intended marriage between the parties. Even after marriage, the marriage must survive to its logical end and if any attempt is made to sever such a continuity in the marriage bond by adopting one means or the other, namely, by making demands, though under different heads, as in this case, then it must be held that such demands are definitely in connection with the marriage of the parties, namely, A-1 and the deceased. In these circumstances, we are inclined to reject the argument advanced by the learned counsel for the appellants and sustain the argument advanced by the learned Addl. Public Prosecutor that the demands spoken to by P.W.s 1 to 3 are definitely in connection with the marriage of A-1 and the deceased.

33. By relying upon the judgment of the Supreme Court in Kunhiabdulla & Another - Vs. - State of Kerala (2004 Crl. L.J. 5005), learned counsel for the appellants would contend that there is nothing to show that soon before her death Archana was subjected to dowry demands, which alone would enable this Court to conclude that there is dowry death. The Supreme Court, in the said judgment, had held thus :-

> "Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence."

Therefore, it is clear what period would come within the term "soon before" would depend upon the facts available in each case. In our considered opinion, it is an elastic term. There must be nexus between the alleged exposure to cruelty or the date on which the demand for dowry made till the dreaded incident, namely, the death takes place. In this case, we have already noted that the link had survived throughout. It is not as though the making of demands came to an end just before the marriage. But, on the other hand, in one form or the other, one demand or the other was continuously made from the accused side. In these circumstances, in the light of the law laid down by the Supreme Court, as

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referred to above, and in the factual scenario available in this case, we have no doubt at all that the victim had been subjected to cruelty or harassment at the hands of the appellants before this Court as contemplated under Section 304-B IPC. The Supreme Court, in the judgment referred supra, had detailed the essential ingredients of the offence under Section 304-B IPC as hereunder:-

> "(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.
> (ii) Such a death should have occurred within seven years of her marriage.
> (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
> (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
> (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death."

In this case, we have to state that all the ingredients of Section 304-B IPC as referred to above stands squarely established.

34. When Section 304-B IPC was introduced in the Indian Penal Code, correspondingly Section 113-B was introduced in the Indian Evidence Act. That section creates a statutory presumption, namely, when the question whether a person has committed dowry death of a woman comes up for consideration and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused dowry death. Therefore, in addition to the direct evidence available in this case, the Court has got a legal duty to draw a statutory presumption as contemplated under Section 113-B of the Indian Evidence Act. In this case, in addition to Section 113-B of the Indian Evidence Act, we find yet another provision giving a statutory presumption, namely, Section 8-A of the Dowry Prohibition Act, which states that when any person is prosecuted for taking up any dowry under Section 3 or demanding of dowry under Section 4 of the Dowry Prohibition Act, the burden of proving that he had not committed an offence under the sections shall be on the said person. In other words, under Section 8-A of the Dowry Prohibition Act, the burden rests on the accused defending the prosecution under Section 4 of the Dowry Prohibition Act to show that he had not committed the offence.

35. In this case, we have already noted that the evidence of P.W.s 1 to 4 had established that prior to the marriage, during marriage and after marriage there had been demands for dowry, though after the marriage the demands were not having the distinct colour of dowry, but only in a camouflaged form. As noted earlier, the demands after marriage was for the purpose of expanding the business of A-1; towards reimbursement of the expenses incurred by the accused in the failed betrothal function of A-5 held at Delhi and to meet the expenses of A-5's marriage which is to take place in the near future. Thus the prosecution had stated that it is a dowry demand and it was in connection with

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the marriage of Archana with A-1. These materials stare at the face of the accused and our finding is also in favour of the prosecution. Therefore, to come out of this tight corner, the accused must have let in evidence. The initial burden of proving under Section 304-B IPC with the help of the statutory presumption available under Section 113-B of the Indian Evidence Act, is on the prosecution, namely, they must satisfy the ingredients of Section 304-B IPC by producing necessary materials and then only the burden shifts to the accused. As far as the presumption under section 8-A of the Dowry Prohibition Act is concerned, once a prosecution is launched against a person for the offence under section 3 or under section 4 of the Dowry Prohibition Act, the initial burden itself lies on the accused to prove that he had not committed an offence under the sections referred to above. At the risk of repetition, we state that we have already found from the evidence that Archana was found to be not happy at all in her married life in her matrimonial abode. The reasons are not far off to be seen and according to us, the only reason would be the manner in which the accused have conducted themselves by exposing Archana to mental pressure and agony by making demands in one form or the other periodically from her parents' side thereby giving a definite impression to her that her married status could no-longer be continued, unless the demands made by them were met by her parents. This should be her only perception. Even on the morning of the occurrence day, evidence shows that, she was weeping over telephone to her brother and father. This only speaks volumes about the torture - more predominantly mental torture, to which she would have been subjected to and the mental agony she would have been suffering as a result thereof. When such is the evidence available, we have no doubt at all that a duty is cast upon the accused to prove, that they have not committed any offence under the Dowry Prohibition Act, as contemplated under section 8-A of the said Act. In this case, we have already found that the prosecution had definitely established the essential ingredients of section 304-B I.P.C and therefore the Statutory presumption available under section 113-B of the Indian Evidence Act gets attracted. Even on that presumption, the accused is duty bound to place rebuttal evidence. From either angle, the accused had not placed any material at all.

36. Relying upon Ex.P.36, the report of the scientific expert and his oral evidence, it is contended that Archana must be moving from one place to another in the open terrace and therefore the prosecution case that she was beaten to death and then set fire to, cannot be believed. It must be noticed that the prosecution of the accused is not under section 302 I.P.C. Learned counsel for the appellants is right in stating that the scientific expert's report and the plan show that Archana was moving atleast from one place to another before she ultimately died due to burn injuries. Medical evidence shows that she had suffered internal injuries on her head. The doctor, who did post-mortem, had categorically ruled out the possibility of Archana suffering internal head injuries by coming into contact on her own with any other object. The doctor also opined that any blunt weapon would have caused the internal injuries found on the head of Archana. Therefore, the possibility of Archana being

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assaulted prior to her fateful end cannot be totally ruled out. Ofcourse, there is no direct evidence to show who attacked her. The case of the defence that A-1 to A-4 were not in the house at all at the occurrence time is not established. Assuming A-1 and A-4 had gone out to the factory, it has come out on evidence that the factory premises is hardly at a distance of five minutes walk from the house of the accused. Though the presence of A-2 and A-3 in the private clinic at Mambalam is attempted to be established, yet we are of the opinion that assuming it is true that A-2 and A-3 had gone to the hospital, as put forward to the witness in cross-examination, that by itself, in our considered opinion, do not rule out their presence in the house at the time of the occurrence. There is no acceptable evidence to show the exact time of their presence in the hospital. In any event, we find that there is no dispute that Archana was living at her matrimonial abode as a member of the joint family along with her husband, A-1 and A-2 to A-5. The accused are not tried for the offence of murder so that a plea of alibi could come handy for anyone of the accused to escape from the clutches of law. On the other hand, the trial is for offences under Sections 498-A and 304-B IPC and Sections 4 and 6 (2) of the Dowry Prohibition Act. Therefore, assuming for a minute, without conceding, that A-1 to A-4 were not in the house at the time of the occurrence (though we are not agreeing with that defence version), yet, having regard to the offences for which the accused were put up for trial and actually tried, the continued presence of the accused at the time when Archana's life was brought to an end is not necessary to sustain the prosecution case. In other words, it may be only a momentus absence of A-1 to A-4, assuming it is so, from the crime scene, when Archana's life came to an end. That does not mean that their involvement in the crime is totally eliminated. An argument is advanced by the learned counsel for the appellants, by relying on the opinion of the panchayatdars, who participated in the inquest held by P.W.23, the Thasildar. Ex.P.35 is the said report. In column No.15 of that report, the opinion of the panchayatdars stands reduced into writing as hereunder:-

> "We know Sanjay Dalmia (A1) and his wife (deceased) very well; they have been leading a happy life; we know that at 11.00 a.m on 30.01.2001, Archana Dalmia died in the open terrace of her house with burn injuries; however we do not know how she suffered burn injuries."

Relying upon a part of this conclusion namely, A1 and Archana were living happily together, an argument is advanced by the learned counsel for the appellants that the present prosecution case that all the time Archana was unhappy due to one reason or other attributable to the accused, stands falsified. Column No.1 of Ex.P.15 shows who the panchayatdars are. They are, a lady by name Suraj (Marwari Community); Baba Kumar, stated to be in the cine-field; Chandrasekar - a coolie residing at Punjab corner, West Mambalam; Malar, a construction worker residing at Punjab Garden and Sekar, a coolie residing at Alapakkam, Chennai - 600 118. P.W.23, the inquest Thasildar, had admitted that all the panchayatadars were brought by A1. This inquest was held by P.W.23 on 31.01.2001. From the status of the panchayatadars as disclosed in Column No.1 of Ex.P.35 and the fact that they were

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brought by A1 for the inquest, we have every reason to doubt as to whether these five panchayatadars were obliging people to the family of the accused as otherwise, how a person namely, Sekar, residing at Alapakkam with pincode of 600 118 could say that he knows A1 and his family, who were living at West Mambalam with pincode of 600 033. There is no evidence to show that the above referred to panchayatadars had ever visited the house of A1. We are at a loss to understand as to how a man in cine-field; a coolie; a construction worker and a coolie again, would be in a position to know the in and out of the family of the accused. Under these circumstances, we are not at all impressed with the argument advanced by the learned counsel for the appellants that based on Ex.P.35, the present prosecution case that Archana was subjected to harassment, cannot be sustained. For all the reasons stated above, we find that there are no merits in the appeal and, accordingly, it stands dismissed.

37. As far as the revision against acquittal is concerned, the challenge is in respect of A-5's acquittal alone. We went through the judgment under challenge and the learned trial Judge, relying upon the phone calls stated to have been made at or about the time from the crime scene to an outside number and appreciating the entire evidence on record, had come to the conclusion that the involvement of A-4 and A-5 in the prosecution case, as projected now, is not established. It must be noticed that A-5 is a young girl aged about 21 or 22 years at the time when the crime was committed. P.W.1 has not chosen to challenge the acquittal of A-4. The State had not challenged the acquittal of A-4 and A-5. We are fully aware of the legal constraints of the Court while dealing with a revision against acquittal. On going through the reasons given by the learned trial Judge in acquitting A-5, we find that the acquittal is based on appreciation of evidence. No error of law is shown to have been committed at all by the learned trial Judge in acquitting A-5. In these circumstances, finding no legal infirmity in the judgment under challenge acquitting A-5, we find no ground to interfere with the said order of acquittal. Accordingly, the revision stands dismissed.

38. In the result, the criminal appeal as well as the criminal revision fails and they are dismissed.

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To

1) The Presiding Officer, Mahalir Neethi Mandram, Chennai.

2) The District Collector, Chennai.

3) The Director General of Police, Chennai.

4) The Superintendent of Central Prison, Vellore.

5) The Public Prosecutor, High Court, Madras.

6) The Deputy Superintendent of Police,
CB-CID Metro Wing, Chennai - 2.

7. The Superintendent,
Special Prison, for Women, Vellore.

1 cc to Mr.Sanjai Ramasamy, Advocate, sr. 35950
1 cc to Mr.S. Anatha Narayanan, Advocate, Sr. 35749

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AND
CRL. R.C. NO.1588 OF 2004

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